

BOARD OF COMMISSIONERS AGENDA ROUTE SHEET
REFERRED TO COMMISSION COMMITTEE NUMBER 1
FOR BOARD ACTION ON JUNE 15, 2009

ORDINANCE NO. _____

AN ORDINANCE AMENDING ORDINANCE NO. 344,
RELATIVE TO THE METHOD OF APPEALING AN
ADVERSE DECISION OF THE SHELBY COUNTY
ADULT-ORIENTED ESTABLISHMENT REGISTRATION BOARD.

Sponsored by Commissioner Mulroy.

CHECK ALL THAT APPLY BELOW:

 X This Action does NOT require expenditure of funds.

 This Item requires/approves expenditure of funds as follows (complete all that apply):

County General Funds: \$ _____ ; County CIP Funds- \$ _____

State Grant Funds: \$ _____ ; State Gas Tax Funds: \$ _____

Federal Grant Funds: \$ _____

Other funds (Specify source and amount): \$ _____

Other pass-thru funds (Specify source and amount): \$ _____

Originating Department: _____

APPROVAL:

Dept. Head: _____ \ _____ \ _____
(Type your name & phone #.) (Initials) (Date)

Elected Official: _____ \ _____ \ _____
(Type your name & phone #.) (Initials) (Date)

Division Director: _____ \ _____ \ _____
(Type your name & phone #.) (Initials) (Date)

CIP – A&F Director _____ \ _____ \ _____
(Type your name & phone #.) (Initials) (Date)

Finance Dept. _____ \ _____ \ _____
(Type your name & phone #.) (Initials) (Date)

County Attorney: Robert B. Rolwing, # 5133 \ _____ \ _____
(Type your name & phone #.) (Initials) (Date)

CAO/Mayor: _____ \ _____ \ _____
(Type your name & phone #.) (Initials) (Date)

SUMMARY SHEET

I. Description of Item

Amendment changes the method of appeal from the Shelby County Adult Oriented Establishment Registration Board to court. The appeal method will be the same as used in virtually all other appeals from county and state board decisions to court (the “common-law writ of certiorari”).

The state legislature amended state law in 2008 specifically to allow this appeal method, at the urging of the County Commission’s 2008 legislative packet. Commissioner Mulroy spoke before the State House in support of Shelby County’s proposal to allow this appeal method.

II. Source and Amount of Funds

<u>A. Amount Expended</u>	<u>Budget Line Item</u>
\$ 0	
 <u>B. All Costs</u>	
N/A	
 <u>C. Additional or Subsequent Obligations or Expenses of Shelby County</u>	
N/A	

III. Contract Items

N/A

IV. Additional Relevant Information

Enforcement of the Tennessee Adult-Oriented Establishment Registration Act (licensing adult businesses and their employees) is currently enjoined by the federal court. A hearing was held by the federal Court of Appeals in April 2009, and we expect a ruling in mid-summer 2009. If the Court of Appeals affirms the lower courts’ ruling in Shelby County’s favor, enforcement will begin 30 days after such ruling.

The provision that a board decision is not enforceable until after a court rules on an appeal is a requirement of the courts, due to First Amendment concerns.

Item #: _____

Prepared by: Robert B. Rolwing

Approved by: Robert B. Rolwing

ORDINANCE NO. _____

**AN ORDINANCE AMENDING ORDINANCE NO. 344,
RELATIVE TO THE METHOD OF APPEALING AN
ADVERSE DECISION OF THE SHELBY COUNTY
ADULT-ORIENTED ESTABLISHMENT REGISTRATION BOARD.**

Sponsored by Commissioner Mulroy.

WHEREAS, On September 10, 2007, this Board of County Commissioners enacted an Ordinance Repealing Ordinance No. 81 Relative to Regulating and Licensing Sexually Oriented Businesses, and Adopting the State Adult-Oriented Establishment Registration Act of 1998 in Shelby County (Ordinance No. 344); and

WHEREAS, On January 7, 2008, this Board of County Commissioners passed A Resolution Approving Proposed Legislation and Requesting the Shelby County Legislative Delegation to Introduce and Support a Legislative Bill Entitled “An Act to Amend Tennessee Code Annotated, Title 7, Chapter 51, Sections 1109 and 1110, Relative to Appealing an Adverse Decision Regarding Adult Oriented Establishment Licenses and Permits, and Section 1102(25), Relative to the Definition of ‘Specified Criminal Acts’”; and

WHEREAS, The state legislature adopted that recommendation as 2008 Public Acts ch. 1085; and

WHEREAS, The state legislature previously amended the common-law writ of certiorari procedures, Tenn. Code Ann. § 27-9-102, in order to better protect First Amendment rights; and

WHEREAS, This Board of County Commissioners finds it in the best interests of the citizens of Shelby County and persons who may be affected under the Adult-Oriented Establishment Registration Act that the amended procedures of the common-law writ of certiorari should apply in the event of an adverse decision of the Shelby County Adult Oriented Establishment Board;

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF SHELBY COUNTY, TENNESSEE, That Ordinance No. 344, the September 10, 2007, Ordinance Repealing Ordinance No. 81 Relative to Regulating and Licensing Sexually Oriented Businesses, and Adopting the State Adult-Oriented Establishment Registration Act of 1998 in Shelby County, be and hereby is amended to adopt the appeal procedures of Tenn. Code Ann. §§ 7-51-1109(d) and 1110(d), for decisions of the Shelby County Adult-Oriented Establishment Board, and the Shelby County Code shall reflect such adoption in this manner: “Any individual or entity whose application has been denied by the adult-oriented establishment board, or whose license or permit the board has suspended, revoked, or annulled, pursuant to the Tennessee Adult-Oriented Establishment Registration Act may appeal such decision by common-law writ of certiorari according to the procedures of state law.” (*Tennessee Code Annotated sections 7-51-1109[d], 1110[d]; sections 27-9-101, et seq., and as such sections may be subsequently amended.*)

BE IT FURTHER SO ORDAINED, That: “Any such administrative decision to suspend, revoke, or annul a license or permit that is appealed to the circuit or chancery courts of Shelby County shall not take effect until that administrative decision has been upheld by the court after adjudication on the merits. Adverse decisions of the board that are not appealed shall not take effect for sixty days from the date of the decision to allow the affected party time to seek judicial review.” (*Tennessee Code Annotated section 7-51-1109[b][2].*)

BE IT FURTHER ORDAINED, That the various sections of this Ordinance are severable, and that any portion declared unlawful shall not affect the remaining portions.

BE IT FURTHER ORDAINED, That this Ordinance shall become effective according to law.

DIEDRE MALONE, Chairman

Date: _____

A C WHARTON, JR., County Mayor

Date: _____

ATTEST:

Clerk

ADOPTED: _____
First Reading

Second Reading

Third Reading